

JURY DEMANDED

Case 1:12-cv-00061-WBC Document 25 Filed 09/28/12 Page 1 of 3 PageID #: 244

would incorporate by reference the simultaneously filed Statement of Undisputed Facts in support of State Farm's Motion.

The current scheduling order requires that all dispositive motions be filed on or before October 2, 2012. (D.E. #7). State Farm would draw this Court's attention to the fact that Plaintiff has not responded to interrogatories, requests for production and requests for admissions propounded by State Farm on August 17, 2012. (*See* Notice of Service of Discovery D.E. #24). As of the filing of this motion, State Farm has not received Plaintiff's response to the requests for admission.² Based upon Plaintiff's failure to respond within the thirty (30) days as required by Fed. R. Civ. P. 36(a)(3), State Farm would show this Honorable Court that those requests for admissions should be considered admitted, and the facts contained therein considered established and undisputed. State Farm reserves the right to seek further assistance of this Court to obtain discovery responses, and further reserves the right to amend and/or supplement these summary judgment materials once discovery responses have been received.

Respectfully submitted this 28th day of September, 2012.

THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL, PLLC

By: /s Albert C. Harvey

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² Counsel for State Farm conferred with Plaintiff's counsel on September 26, 2012, at which time Plaintiff's counsel stated that the discovery responses were mailed on September 11, 2012, but were returned to sender. Plaintiff's counsel further stated that the responses were re-mailed on or about September 24, 2012. State Farm has not received any discovery responses as of the filing of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served, via the courts ECF filing system, this the 28th day of September, 2012, upon:

Robert G. Norred, Jr. (#12740)
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s/ Albert C. Harvey

* Mr. Vescovo and Mr. May have applied for admission to the Eastern District and are scheduled to be sworn in on November 5, 2012.

4843-4028-2641, v. 1